UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARCIA WILLIAMS and KAREN WUNZ, Plaintiffs, v. NATIONAL LABOR RELATIONS BOARD, Defendant.	)	Case No. 18-cv-370-RAL

BRIEF IN SUPPORT OF THE NATIONAL LABOR RELATIONS BOARD'S MOTION TO DISMISS BASED ON MOOTNESS

Plaintiffs Marcia Williams and Karen Wunz ("Williams and Wunz") brought this action against the National Labor Relations Board ("NLRB") for alleged violations of the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169, the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, *et seq*, and the U.S. Constitution. Williams and Wunz allege that the NLRB violated these statutes and the U.S. Constitution when its Regional Director in its Pittsburgh Regional Office "refused to investigate" Williams's union decertification petition and applied the "settlement bar," a long-standing, Board-created doctrine, to dismiss the petition. [Complaint 6-9]. Williams and Wunz further allege that the Regional Director's dismissal deprived them of their constitutional right to due process. [Complaint 10-11]. Finally, they allege that the settlement bar violates the NLRA and the separation of powers and nondelegation doctrines. [Complaint 9-11]. Their Complaint seeks both declaratory and injunctive relief from the NLRB's actions. [Complaint 11-12].

In its brief supporting its first Motion to Dismiss, the NLRB alerted the Court that this case would become moot on April 6, 2019, the day after the settlement bar was to expire.

[NLRB's Motion to Dismiss: Doc. 15-1, pp. 19-20]. Because it has now expired, Williams and Wunz may file another decertification petition, which will not be subject to the settlement bar. Therefore, their Complaint is now moot and must be dismissed for lack of subject matter jurisdiction.

I. This Court Lacks Subject Matter Jurisdiction Because This Case is Moot

A federal court only has jurisdiction to decide actual controversies in which the court's judgment may be carried into effect. *Local No. 8-6, Oil, Chem. & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 367 (1960) (hereinafter "*Local No. 8-6*"). Invoking federal jurisdiction requires a plaintiff to "show a 'personal stake' in the outcome of the action." *United States v. Sanchez-Gomez*, 138 S.Ct. 1532, 1537 (2018) (quoting *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)). Once "developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief," the court lacks jurisdiction. *Hamilton v. Bromley*, 862 F.3d 329, 335 (3d Cir. 2017) (quoting *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698–99 (3d Cir. 1996)); *see also North Carolina v. Rice*, 404 U.S. 244, 246 (1971) ("Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions.'" (quoting *United States v. Alaska SS Co.*, 253 U.S. 113, 116 (1920)). To render an opinion on a moot case "would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed." *Local No. 8-6*, 361 U.S. at 367-68.

Therefore, this Court must evaluate whether Williams and Wunz's Complaint currently presents "a case or controversy susceptible to judicial resolution," *Jersey Cent. Power & Light Co. v. New Jersey*, 772 F.2d 35, 39 (3d Cir. 1985), or "whether changes in circumstances that

prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief," *Rendell v. Rumsfeld*, 484 F.3d 236, 240 (3d Cir. 2007). A true case or controversy must be premised on facts, not on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-81 (1985) (quoting 13A C. *Wright, A. Miller, & E. Cooper, Federal Practice and Procedure* § 3532 (1984)); *see also Marine Equip. Mgmt. Co. v. United States*, 4 F.3d 643, 646 (8th Cir. 1993) ("Federal jurisdiction is not created by a previously existing dispute.") (citing *Golden v. Zwickler*, 394 U.S. 103, 108 (1969).

For example, in *Local No. 8-6*, the state of Missouri filed in state court for an injunction against union workers engaged in an allegedly unlawful strike. 361 U.S. at 366. Though the trial court enjoined the strike and the strike terminated the following day, the Supreme Court of Missouri heard the strikers' appeal on the merits. *Id*. In reviewing the case, the U.S. Supreme Court found that once the strike ended, the injunction expired. *Id*. The case became moot because "there remain[ed] for this Court no 'actual matters in controversy essential to the decision of the particular case before it.'" *Id*. at 367 (quoting *Alaska SS Co.*, 253 U.S. at 116).

Likewise here, Williams and Wunz's claims are moot because the settlement bar they are challenging expired on April 6, 2019; should Williams or Wunz file a new petition, the settlement bar at issue will not prevent a decertification election from proceeding. Just as the termination of the strike in *Local No. 8-6* mooted the government's claim for injunctive relief against the strikers, so too does the settlement bar's expiration in this case moot Williams and Wunz's claims. Accordingly, because this Court can order no meaningful relief to Williams and Wunz, it should dismiss the Complaint as moot. *See Rendell*, 484 F.3d at 240; *Hamilton v. Bromley*, 862 F.3d at 335.

II. No Exception to Mootness Applies Here

The Third Circuit recognizes four exceptions to the mootness doctrine. A case will not be dismissed as moot if: "(1) secondary or 'collateral' injuries survive after resolution of the primary injury; (2) the issue is deemed a wrong capable of repetition yet evading review; (3) the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time; or (4) it is a properly certified class action suit." *Chong v. INS*, 264 F.3d 378, 384 (3d Cir. 2001) (citing *Artway v. Attorney Gen. of N.J.*, 81 F.3d 1235, 1246 n.6 (3d Cir. 1996)).

A party asserting that its claim falls under the second exception--that the issue is capable of repetition yet evading review--must demonstrate that "[1] the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration and [2] there [is] a reasonable expectation that the same complaining party will be subject to the same action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 481 (1990)); *see also Belitskus v. Pizzingrilli*, 343 F.3d 632, 648 (3d Cir. 2003). Prong two of the "capable of repetition yet evading review" test requires more than "a mere physical or theoretical possibility" that the plaintiff may be subject to the exact same conduct. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). Rather, "[t]here must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur involving the same complaining party." *Id*. (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam)); *see also Hamilton*, 862 F.3d at 335; *Jersey Cent. Power & Light Co.*, 772 F.2d at 40.

The Supreme Court construed the second prong of the "capable of repetition yet evading review" exception in *Weinstein* when a prisoner sued the state parole board, alleging that it was required to accord prisoners certain procedural rights in considering parole eligibility. Even though others were still subject to the parole board's jurisdiction, the Court found the case was

moot because once the plaintiff was completely released from supervision, there was "no demonstrated probability that [he would] again be among that number." 423 U.S. at 148-49; *see Belitskus*, 343 F.3d at 649 (challenge to Pennsylvania's ballot access law found moot when plaintiff left Pennsylvania and record did not suggest that he would return and be eligible to vote for candidates adversely affected by the law); *Doe v. Delie*, 257 F.3d 309, 314 (3d Cir. 2001) (claims for declaratory and injunctive relief related to incarceration were mooted by the accused's acquittal because there was no "reasonable likelihood that [he would] be subject to the same action").

In *Hamilton v. Bromley*, the Third Circuit similarly found the "capable of repetition yet evading review" exception inapplicable. 862 F.2d at 335. After Hamilton's son was removed from his custody and placed in a youth group home, Hamilton sought declaratory and injunctive relief in federal court against county defendants, alleging that he had not been permitted to contact his son. *Id.* at 332. During the litigation, Hamilton regained custody of his son. *Id*. at 333.The Third Circuit upheld the district court's dismissal, agreeing that the case became moot when Hamilton regained custody. *Id*. at 334. The court noted that the mere "theoretical possibility" of the child again being placed in a group home where Hamilton could not contact him was insufficient to invoke the "capable of repetition yet evading review" exception to mootness. *Id*. at 337.

Williams and Wunz's claims do not fit within any of the mootness exceptions. *See Chong*, 264 F.3d at 384. With respect to the first exception, Williams or Wunz may file another decertification petition without having sustained any secondary or "collateral" injury. The third exception does not apply because the NLRB did not voluntarily cease applying the settlement bar

to Williams's decertification petition; the settlement bar simply expired by its own terms. And, as this is not a class action suit, the fourth exception does not apply.

Finally, the second mootness exception, for claims that are "capable of repetition, yet evading review," is similarly inapplicable. Because the settlement bar that is the subject of the Complaint has expired, Williams and Wunz cannot show a "demonstrated probability" that the "same complaining party would be subjected to the same action again." *Jersey Cent. Power & Light Co.*, 772 F.2d at 40 (quoting *Murphy*, 455 U.S. at 482).

CONCLUSION

Because there presently exists no case or controversy in this matter, the NLRB respectively submits that its Motion to Dismiss should be granted on grounds of mootness.

Respectfully submitted,

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